

15th day of November, 2001
STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-9/50309

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Chippewa County Dept. of Social Services in regard to medical assistance, a hearing was held on October 1, 2001, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner divested funds when her name was removed from two CDs worth approximately \$45,000.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
(petitioner)

Represented by:
Thomas A. Starr
P O Box 81
Boyd, WI 54726

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sharee Burns, ESS
Chippewa County Dept Of Social Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxx) is a resident of Chippewa County.
2. The petitioner sold her farm in 1992 and, after paying off bills, placed the funds in certificates of deposit. Those certificates included the names of her six children.
3. The petitioner renewed the CDs originally purchased in 1992 as they became due. As of May 10, 2001, the petitioner held two CDs jointly with her children. Their value was \$45,014.42.
4. The petitioner used the interest from the CDs to cover her living expenses. There is no evidence that any of her children used any of the interest. She had access to all of the funds in those CDs and could have withdrawn the entire amount at any time.

5. The petitioner set up two new CDs on July 11, 2001. These CDs had only the names of her children on them. Prior to drawing up the CDs the petitioner withdrew one-seventh of the value of each so that she could set up a burial trust.
6. The county agency denied the petitioner's request for institutional medical assistance because it considered the establishment of the new CDs to be a divestment.

DISCUSSION

A person whose assets exceed \$2,000 is ineligible for medical assistance. §49.47(4)(b)3g, Wis. Stats. Medical assistance law prevents a recipient from reaching this limit by divesting assets. A divestment occurs when an applicant, or person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. An asset has the meaning found in 42 U.S.C. § 1396p (e) (1). *See* §49.453(1)(a), Stats. The federal code defines asset as "all income and resources of the individual ... including any income or resources which the individual ... is entitled to but does not receive because of an action by the (A) individual..." The lookback period is generally 36 months. §49.453(1)(f), Wis. Stats. The issue here is whether the petitioner divested funds when she dropped her name from two CDs worth approximately \$45,000 that she held jointly with her six children.

The petitioner first set up the CDs in 1992 with the proceeds from the sale of her farm. Those CDs and subsequent CDs established when those expired included the names of her six children. In July 2001 she withdrew one-seventh of the funds for a burial trust for herself and placed the remaining funds in two new CDs that were solely for the benefit of her children. Until she set up the latest CDs she had been using the interest from the previous ones for herself. There is no indication that her children used any of the interest for their benefit. In the summer of 2001 the petitioner entered a nursing home and sought institutional medical assistance. The county agency denied that assistance because it determined that the petitioner divested funds when she dropped her name from the CDs.

There is no question that the petitioner divested money at some point because she had an asset that she transferred to others without receiving anything in return. Thus the underlying issue is when the divestment occurred. Her attorney contends that any divestment took place in 1992 when she set up the joint accounts. I disagree. From 1992 until the most recent change in the CD the petitioner had the entire account available for her own use and in fact did use it solely for her own benefit. Only with the most recent change did she lose control of the money. Furthermore, if she had entered a nursing home in the 36 months after she set up the original CDs I am aware of no Office of Administrative Hearings or Division of Hearings and Appeals decision that would have found that putting her children's names on the CDs would by itself have constituted a divestment. Therefore the divestment occurred in 2001 and the petitioner is ineligible for institutional medical assistance. The amount of the divestment is the amount used to establish the new CDs for her children.

CONCLUSIONS OF LAW

The petitioner is ineligible for institutional medical assistance because she divested funds when she established new CDs without her name on them.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this _____ day of
_____, 2001.

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
1121/MDO

cc: Gwen Gust - Chippewa Co. - e-mail
Susan Wood